

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

JOSEPH S. FERGUSON,)
)
Plaintiff,)
)
v.) 1:15CV450
)
N.C. DEPT. OF PUBLIC SAFETY,)
)
)
Defendant(s).)

ORDER AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

Plaintiff, a prisoner of the State of North Carolina, submitted a civil rights action pursuant to 42 U.S.C. § 1983, together with an application to proceed *in forma pauperis*. He later submitted an Amended Complaint. The form of the Complaint and Amended Complaint are such that serious flaws make it impossible to further process them. The problems are:

1. The filing fee was not received nor was a proper affidavit to proceed *in forma pauperis* submitted, with sufficient information completed or signed by Plaintiff, to permit review. Plaintiff submitted two *in forma pauperis* applications, but fails to include the amount of deposits into his trust account in the past six months on either application.
2. The Complaint and Amended Complaint use the proper forms, but Plaintiff did not complete the forms to provide the information necessary to process them pursuant to 28 U.S.C. § 1915A. Most importantly, Plaintiff did not complete Section IV of the forms where he must list any Defendants and their addresses.

3. Plaintiff does not name proper defendants or give sufficient addresses for them to be served. As just stated, he lists no Defendants in Section IV of his original Complaint or the Amended Complaint. Plaintiff must name the persons who are actually responsible for the alleged violations of his constitutional rights. He does list the North Carolina Department of Public Safety in the caption of the Complaint, but listing a party in the caption only is not sufficient. Also, the entity listed is not a person. Plaintiff lists some persons in the caption of his Amended Complaint, but does not explain how they violated his federal rights.
4. Plaintiff sets out a series of facts in Section V of the Complaint and the Amended Complaint and in what the Court filed as several Supplements [Doc. #3, #5-#8] to the Complaint, but it is unclear which facts he contends represent the violation of his federal constitutional or statutory rights. The facts appear to relate to an alleged assault on Plaintiff by a fellow inmate, but the basis of his federal claims is not clear. To the extent Plaintiff may be alleging that prison officials or medical staff were negligent in Plaintiff's subsequent medical care, a § 1983 claim for an Eighth Amendment violation would require that Plaintiff allege facts showing deliberate indifference to a serious medical need, not just negligence. Likewise, to the extent Plaintiff may be alleging that prison officials failed to protect him from harm, Plaintiff must allege facts to support a claim that prison officials acted with deliberate indifference to Plaintiff's safety. Plaintiff should also make it clear which persons he believes violated his rights and how by tying particular facts to particular Defendants. In addition, to the extent that Plaintiff attempts to raise claims on behalf of other inmates, he may not represent other inmates *pro se*, and may only bring claims on his own behalf.

Consequently, the Complaint and Amended Complaint should be dismissed, but without prejudice to Plaintiff filing a new complaint, on the proper § 1983 forms, which corrects the defects of the present filings. To further aid Plaintiff, the Clerk is instructed to send Plaintiff new § 1983 forms, instructions, an application to proceed *in forma pauperis*, and a copy of pertinent parts of Fed. R. Civ. P. 8 (*i.e.*, Sections (a) & (d)).

In forma pauperis status is granted for the sole purpose of entering this Order and Recommendation.

IT IS THEREFORE ORDERED that *in forma pauperis* status is granted for the sole purpose of entering this Order and Recommendation. The Clerk is instructed to send Plaintiff § 1983 forms, instructions, an application to proceed *in forma pauperis*, and a copy of pertinent parts of Fed. R. Civ. P. 8 (*i.e.*, Sections (a) & (d)).

IT IS RECOMMENDED that this action be filed and dismissed *sua sponte* without prejudice to Plaintiff filing a new complaint, on the proper § 1983 forms, which corrects the defects cited above.

This, the 16th day of September, 2015.

/s/ *Joi Elizabeth Peake*
United States Magistrate Judge